IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6876 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE A.S.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ADHYARU AJAY JAYANTILAL

Versus

G. P. S. C.

Appearance:

1. Special Civil Application No. 6876 of 1994

MR PC KAVINA for Petitioner No. 1

Mrs. Manisha Lavkumar Shah, AGP, for Respondent No. 1

MR TH SOMPURA for Respondent No. 1,4

MR SK PATEL for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.S.DAVE

Date of decision: 14/10/2004

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate order directing the respondent

No.1-the Gujarat Public Service Commission to consider the case of the petitioner for being appointed to the post of Lecturer in Plastic Technology at L.D.Engineering College. It is further prayed to quash and set aside the select list prepared by the Committee in connection with the selection process held on 21.4.1994 pursuant to the advertisement dated 4.11.1993 published in Gujarat Samachar.

2. It is the case of the petitioner that, initially, the petitioner was appointed as Assistant Lecturer on 1.7.1989 and continued to serve in the said Department. The said appointment was given by the Department of Technical Education on 22.5.1989. At that point of time, there was no regular appointment in Class II or Class I, nor on ad-hoc basis. Thereafter, the petition was given extension on the said post upto 31.12.1990 and, later on, came to be relieved on 29.5.1990. Thereafter, an advertisement was published by the Directorate of Technical Education and the petitioner was appointed on temporary post and posted to work at the Government Polytechnic, Ahmedabad, and, accordingly, the petitioner joined the service on 16.8.1990. It appears that, thereafter also, the petitioner continued to serve on the post of Lecturer (Plastic Engineering) and was posted at the L.D. Engineering College and continued to work upto 28.10.1991. It is the further case of the petitioner that the petitioner had a brilliant academic record and, even in the merit list also, he stood first on number of occasions for ad-hoc appointment. Lastly, the petitioner, after he was given a break for a day, joined the service at the L.D. Engineering College on 30.10.1991 and worked till 25.11.1993. It is the further case of the petitioner that he appeared at the interview conducted by the Gujarat Public Service Commission. He was interviewed by the Selection Committee consisting of 7 members and the petitioner stood first. The petitioner was then appointed as Lecturer, in Gujarat Engineering Service,Class II. The respondent No.1 issued a letter on 18.8.1993 whereby the petitioner was informed that he was appointed to the post of Lecturer, Class II, in the subject of Plastic Technology. Thus, the petitioner had gained experience of a Lecturer for a period of 4 years two months and 11 days in the field of plastic technology. The petitioner was also called upon to deliver lecturers on the said subject on various occasions and the relevant record is produced on record at Annexure "J". The petitioner had also gained various experience in the field of plastic technology. He was also appointed as paper setter and examiner in the plastic technology and Plastic Processing Equipment

Design and Drawing by the Gujarat University. The acknowledgment of the petitioner was also recorded in the magazine named and styled "Medical Plastics Data Service" and he was honoured by the the Editors of the said magazine. Many other achievements of the petitioner are highlighted in the petition. In short, the petitioner has submitted that he has more than adequate knowledge and experience and outstanding merit in the field of plastic technology and has served as Lecture for more than four years.

3. It is averred by the petitioner that, in the advertisement dated 4.11.1993 was published by the GSPC for appointment to the post of Lecturer in Plastic Technology, the basic and requisite qualification was Bachelor of Engineering (B.E.). According to the petitioner, he received a call letter and oral interview was held on 21.4.1994. The Selection Committee was consisted of four Members. 7 candidates appeared for the interview. According to the petitioner, the respondent No.2, who happened to be a student of the petitioner, and completed her B.E. Plastic in the year 1999 with distinction, was also one of the candidates. The respondent No.3 also happened to be another student of the petitioner. The petitioner has further submitted that, in the viva-voice test held on 21.4.1994, certain irrelevant and redundant questions were put up by the Members of the Selection Committee which have no bearing on the subject of Plastic Technology. Ultimately, the respondent No.2 is placed first in the select list whereas the respondent No.3 is placed first in the waiting list and the petitioner was put second in wait list.

4. In this petition, the petitioner has challenged the method and modality of the selection procedure. He submitted that the Selection Committee has deviated from the settled practice and, instead of asking relevant questions pertaining to the subject matter or the post for which the advertisement was given, irrelevant and redundant questions were put which have no bearing to adjudge the merit of the candidate. The petitioner has narrated his agony in the memo of the petition. The Selection Committee has completely ignored the fact that the petitioner is more experienced candidate having complete knowledge about the subject and he has been recognized by various Institutes in the field of plastic engineering in India as well as in abroad.

5. This Court, taking cognizance of the grievance of the petitioner, by order dated 25th May 1994, issued Rule

making it returnable peremptorily on 14th June 1994. The Court has, further, observed in the order dated 25th May 1994, as under:

"The interim relief, therefore, is refused subject to the direction that any appointment that shall be made shall be subject to the result of the petition and order of appointment which may be issued shall contain a specific stipulation that such appointment is subject to the result of this petition and shall abide by the final direction which the court may issue in this petition."

6. It is unfortunate that the matter was not heard immediately and, now, more than ten years have lapsed. Today, though the matter is called out thrice, no one remained present on behalf of the petitioner.

7. Affidavit-in-reply is filed by the then Chairman of the Gujarat Public Service Commission, Mr. K.V. Karihardas, on 21st May 1994. It is stated that the petitioner was interviewed by the Selection Committee consisting of four Members, namely, (1) the Chairman,GPSC, (2) Member, Naynaben Shah, (3) Prof.N.L.Vyas, Joint Director of Technical, Gandhinagar, who was Government nominee, and (4) Shri S.K. Sharma, Sr. Manager (Project), Central Institute of Plastic Engineering & Technology, Ahmedabad. It is further stated that the teaching experience was not an essential qualification and therefore such experience does not entitle any candidate for selection by the Commission much less for the first or second rank in the merit order and, therefore, the contention of the petitioner that he is having superior qualities in comparison to respondents Nos. 2 and 3 is absolutely irrelevant in the present selection.

8. Learned Assistant Government Pleader, Mrs. Shah, has pressed into service the judgment of the Supreme Court in the case of Kanwar Singh vs. State of Haryana and others, reported in (1997) 4 Supreme Court Cases 662. In the aforesaid case, the contention of the petitioner was that weightage of marks should have been given in interview to the service rendered by him earlier. Negativing the aforesaid contention, the Supreme Court held as under:

"It is a competition open to all the persons. By fortuitous circumstances of the previous temporary promotion, separate marks could not be allocated for the previous service in which event such persons will steal a march over the other candidates in the open competition."

The learned AGP has further submitted that there are other pronouncements of the Supreme Court where it is

held that the High Court while exercising power under Article 226 of the Constitution of India, cannot sit in appeal over the expert body or selection committee unless any allegation of mala fides or arbitrariness in the selection process was made. In the present case, no allegation of mala fide is made. It is further submitted that overall performance and abilities and qualities of the candidates are required to be adjudged by the Selection Committee and the action of the Selection Committee cannot be said to be unjust or arbitrary and, therefore, the petition requires to be rejected.

9. On going through the record, this Court does not find any irregularities in the matter of selection of the candidate by the Gujarat Public Service Commission, nor any arbitrariness is reflected in the order. No illegality or mala fides is pointed out while selecting the respondent No. 1. Therefore, the decision taken by the Selection Committee on the basis of the personal interview of the candidates and the requisite certificates, cannot be gone into by this Court in exercise of extraordinary powers under Article 226 of the Constitution of India. In my view, there is no substance in the petition and the petition is required to be rejected.

10. As a result of foregoing discussion, this petition is rejected. Rule is discharged. The ad-interim relief is vacated. In the facts and circumstances of the case, there shall be no order as to costs.

(Anant S. Dave, J.)
(swamy)